

REMARKS

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Claims 1, 8, 9, 11, 13-18 and 21 are pending in this application. Applicant wishes to thank the Examiner for indicating that claims 1, 8, 11, 14, 18 and 21 are allowable and that claim 13 would also be allowed if rewritten in independent form. In view of the following remarks, it is respectfully submitted that all of the presently pending claims are allowable.

Claims 9 and 13 stand rejected under 35 U.S.C. § 102 as anticipated by U.S. Patent No. 5,242,456 to Nash et al. ("Nash"). *Office Action*, pp. 2-3.

Claim 9 recites a device for suturing an opening in an internal organ of a patient comprising "a first catheter for insertion to an opening to be sealed through a working channel of an endoscope" and "a second catheter *slidably received within the first catheter*" and "a plurality of anchoring members received within the second catheter, each of the anchoring members including a shaft extending from *a tissue penetrating distal tip* to a suture receiving proximal end and a *gripping arm moveable between an insertion configuration in which the gripping arm is folded against the shaft and a gripping configuration in which the gripping arm extends away from the shaft*" in combination with "a driving member *slidably received within the second catheter*, extending through the second catheter to a proximal end thereof, wherein advancing the driving member distally into the second catheter advances the anchoring members distally through the second catheter to drive a distal-most one of the anchoring members out of the second catheter *to anchor in a tissue*" and "a length of suture extending between the suture receiving proximal ends of the anchoring members."

In contrast, Nash describes a tool 100B with an attached cartridge 172 mounted on a proximal end thereof. Initially it is noted that the tool 100B and the cartridge 172 are fixed to one another to form a single lumen for receiving clips. *Nash*, Fig. 8. Thus, the cartridge 172 is merely an extension of the tool 100B that holds a stack of clips and the tool 100B is not slidably received within the cartridge 172 or any other member. It is therefore respectfully submitted that Nash neither discloses or suggests "*a second catheter slidably received within the first catheter*," as recited in claim 9.

In addition, the clips described by Nash do not include a shaft extending from *a tissue penetrating distal tip* to a suture receiving proximal end as recited in claim 9. First, these clips include no shaft extending from a distal to a proximal end and no part of these clips

penetrates tissue. Rather, these clips are specifically designed to grip portions of an outer tissue surface to draw the portions toward one another. As clearly indicated in Figs. 3 - 6, 11 - 13, the ends of these clamps do not penetrate tissue. Furthermore, Nash specifically states that "a need exists for some means for grasping, without penetrating or damaging, tissue located internally in the body...so that the internally located tissue can be positioned as desired" and that the jaws of its clamps "grasp the tissue without actually penetrating it." (Specification, col. 2, lines 3 - 8 and col. 6, lines 23-27). Furthermore, the clips are inserted with the jaws closed and are actuated by opening the jaws so that the clips can be positioned adjacent to the tissue and closed thereover. This configuration is substantially different from that recited in claim 9 -- i.e., in the insertion configuration, the gripping arm of the anchoring member is folded against the shaft and, *in the gripping configuration*, the gripping arm extends *away from* the shaft. That is, when gripping tissue, the jaws of the clip are moved as close as possible toward a center of the clip. Of course, as these clips include no shaft, it is not possible to clearly indicate correspondence between the various positions of the clips and the gripping and insertion configurations recited in the claims.

For at least these reasons, it is respectfully submitted that claim 9 is allowable over Nash. Because claim 13 depends from and therefore includes all of the limitations of independent claim 9, it is respectfully submitted that this claim is also allowable.

Claims 15 and 16 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Nash in view of U.S. Patent No. 5,437,680 to Yoon et al. ("Yoon"). *Office Action*, p. 3.

Claim 15 recites a system for suturing an opening within a body comprising "an endoscope including a working channel extending therethrough" and "a first catheter slidably received within the working channel" and "a second catheter *slidably received within the first catheter* and including a plurality of anchoring members slidably received therein, wherein the anchoring members include projecting members for maintaining the anchoring members in desired positions in tissue, the projecting members being in a retracted state while received within the second catheter" in combination with "a *third catheter slidably received within the second catheter* and extending from a proximal end of the endoscope to a proximal end of a proximal-most one of the anchoring members" and "a length of suture extending between the anchoring members."

As previously discussed, Nash neither discloses nor suggests a first catheter slidably receiving a second catheter as recited in claim 15. It is respectfully submitted that Yoon does not

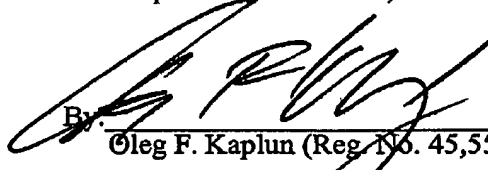
cure this deficiency. Yoon describes an anchor applier instrument 44 including an elongate barrel 49 coupled to a handle 50. A U-shaped spring handle 65 causes an actuator tube 63 to open a pair of gates 55 disposed at the distal end of the barrel 49, allowing an anchor to be ejected towards a pair of jaws 34. Squeezing the handle 50 causes the jaws 34 to close over the anchor 28, compressing distal ends thereof. *Yoon*, col. 6, lines 3-30. This arrangement does not utilize any sliding catheters or tubes whatsoever. Thus, it is respectfully submitted that neither Nash nor Yoon, either alone or in combination, discloses or suggests "a second catheter slidably received within the first catheter" and "a third catheter slidably received within the second catheter," as recited in claim 15.

For at least these reasons, it is respectfully submitted that claim 15 is allowable over Nash and Yoon either taken alone or in combination. Because claim 16 depends from and therefore includes all of the limitations of independent claim 15, it is respectfully submitted that this claim is also allowable.

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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